

CHAPTER 6: PROJECT OCCUPANCY

6.1 INTRODUCTION

The purpose of this chapter is to present the occupancy rules for multi-family projects and the Agency's procedures for determining borrower compliance. Agency procedures for ensuring borrower compliance are summarized at the end of the chapter.

SECTION 1: TENANT ELIGIBILITY REQUIREMENTS [7 CFR 3560.152]

6.2 GENERAL ELIGIBILITY – INCOME ELIGIBILITY AND CITIZENSHIP

In order to be admitted to multi-family housing, applicants must meet three basic requirements.

- Have income that does not exceed the limits defined by the Agency;
- Be a United States citizen or qualified alien; and
- Meet the program definition of an eligible household.

A borrower may determine an applicant ineligible for occupancy based on screening criteria other than those required by the Agency only if such criteria are included in the project's Agency-approved management plan. The screening criteria may not contain arbitrary or discriminatory rejection criteria, but may consider an applicant's past rental and credit history and relations with other tenants.

6.3 INCOME REQUIREMENTS

Three different income limits are used to establish eligibility for multi-family housing programs. The National Office determines the income limits and updates the limits whenever they are revised. **Adjusted income** should be compared to the income limit to determine the category in which each household falls. Income limits are as follows:

- The very low-income limit is established at approximately 50 percent of the median income for the area, adjusted for household size;
- The low-income limit is established at approximately 80 percent of the median income for the area, adjusted for household size; and
- The moderate-income limit is established by adding \$5,500 to the low-income limit for each household size.

The borrower has the right to determine a minimum income level for households of various sizes for applicants who will be receiving Rental Assistance. These guidelines must be administered consistently for all potential applicants. The borrower or management agent may set minimum rent levels for tenants that do not receive Rental Assistance.

6.4 CITIZENSHIP STATUS

To be eligible for Agency assistance, the applicant must either be a U.S. citizen or provide acceptable evidence of eligible immigration status. Any applicant who is neither a U.S. citizen nor a qualified alien must be rejected. Aliens must provide acceptable evidence that they are qualified aliens, as listed in Exhibit 6-1. The Borrower should review the original document and make legible photocopies of both the front and back. If there is a question about the authenticity of the information provided, the Borrower must contact the nearest Immigration and Naturalization Service (INS) for verification.

U.S. Citizens

Never ask about alien status if the application indicates the applicant is a U.S. citizen. **Always** require evidence if the application indicates that the head of household is a qualified alien.

If the tenant is 62 or older, none of these citizenship rules apply for the household.

Exhibit 6-1

Acceptable Evidence of Qualified Aliens

- *Form I-551, Alien Registration Receipt Card* or prior to 1979, *Form I-151* (for permanent resident aliens).
- *Form I-94, Arrival-Departure Record*, with one of the following annotations:
 - ✧ “Admitted as Refugee Pursuant to Section 207”;
 - ✧ “Section 208” or “Asylum”;
 - ✧ “Section 243(h)” or “Deportation Stayed by Attorney General”; or
 - ✧ “Paroled Pursuant to Section 212(d)(5) of the Immigration and Nationality Act (INA)” for a period of at least a year.
- If *Form I-94, Arrival-Departure Record*, is not annotated, it should be accompanied by one of the following documents:
 - ✧ A final court decision granting asylum (but only if no appeal is taken);
 - ✧ A letter from an asylum officer of the U.S. Immigration and Naturalization Service (INS) granting asylum (if application is filed on or after October 1, 1990) or from an INS district director granting asylum (if application filed before October 1, 1990);
 - ✧ A court decision granting withholding of deportation; or
 - ✧ A letter from an INS asylum officer granting withholding of deportation (if application filed on or after October 1, 1990).
- An alien who is granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980, is a qualified alien.
- A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made, and the applicant’s entitlement to the document has been verified.
- If other documents are determined by the INS to constitute acceptable evidence of eligible immigration status, they will be announced by a notice published in the *Federal Register*.

6.5 DETERMINING AN ELIGIBLE HOUSEHOLD

Although it may seem obvious, deciding who is a part of an applicant's household is an important, but not always simple, task. The word "household" applies to individuals and family members who intend to live in a unit.

A. Defining a Household

Deciding who can be considered a household member affects many decisions the borrower must make, including:

- The number of bedrooms the family needs;
- The members' income that must be counted and the income limits that should be used;
- The extent to which the family qualifies for certain income deductions and certain preferences; and
- The household member who can sign legal documents.

B. Who Can Be Counted as a Household Member?

A household may be made up of a variety of members and may have a specific definition. The following are examples of members and types:

- **Elderly families:** A household where the tenant, co-tenant, member, or co-member is at least 62 years old, disabled, or handicapped as defined below. An elderly family may include a person younger than 62 years of age who is essential to the care and well-being of the person who is elderly and/or disabled or handicapped. (To receive an elderly family deduction, the person who is elderly, disabled, or handicapped must be the tenant, cotenant, member, or co-member.)
- **Individual with disability.** A person is considered disabled if the person meets either of the following criteria:
 - ◊ The person has an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, where the disability:
 - ◆ Has lasted or can be expected to last for a continuous period of not less than 12 months, or which can be expected to result in death, AND
 - ◆ Substantially impedes the ability to live independently, AND
 - ◆ Is of such a nature that the ability to live independently could be improved by more suitable housing conditions, OR

- ◆ In the case of a sight-impaired individual (as defined by Section 223 of the Social Security Act) who is at least 55 years old, is unable to engage in substantial gainful activity in which he/she has previously engaged with some regularity over a substantial period of time.

Receipt of veteran's or Social Security Disability payment benefits for disability, whether service-oriented or otherwise does not automatically establish disability.

- ◇ The person has a developmental disability—a severe, chronic disability that:
 - ◆ Is attributable to a mental or physical impairment or combination of mental and physical impairment; AND
 - ◆ Was manifested before age 22; AND
 - ◆ Is likely to continue indefinitely; AND
 - ◆ Results in substantial functional limitations in three or more of the following areas of major life activity:
 - ✓ Self-care
 - ✓ Receptive and expressive language
 - ✓ Learning
 - ✓ Mobility
 - ✓ Self-direction
 - ✓ Capacity for independence
 - ✓ Economic self-sufficiency
 - ◆ Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care or treatment, or for other services which are of lifelong or extended duration and are individually planned and coordinated.
- **Individual with handicap.** A person with a physical or mental impairment that:
 - ◇ Is expected to be of long-continued and indefinite duration; AND
 - ◇ Substantially impedes the person or is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions.

The term handicap further means, with respect to a person, a physical or mental impairment which substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. This term does not include current illegal use of or addiction to a controlled substance. As used in this definition, physical or mental impairment includes:

- ◆ Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine, or

- ◆ Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency syndrome (AIDS), mental retardation, emotional illness, drug addictions (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

Major life activities mean functions such as caring for one’s self, performing major tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Having a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

A person who is regarded as having an impairment:

- ◆ Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
 - ◆ Has a physical or mental impairment that substantively limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
 - ◆ Has one of the impairments defined above but is treated by another person as having such an impairment.
- **Household.** One or more persons who maintain or will maintain residency in one rental or cooperative unit, but not including a resident assistant or chore service worker.
 - **Resident assistant.** A person residing in a tenant’s housing unit who is essential to the well-being and care of the persons who are elderly or have handicaps or disabilities residing in the unit, but is not obligated for the person’s financial support and would not be living in the unit except to provide the needed support services. While the resident assistant may be a family member, the resident assistant may not be a dependent of the household for tax purposes and is not subject to the eligibility requirements of a tenant or member. A resident assistant is not a chore service worker. A resident assistant may function in any type of housing affected by this subpart.

- **Foster children.** Eligible families may include foster children, as long as the children do not cause overcrowding. However, foster children are not considered family members for the purposes of determining income or deductions from income, or to determine household size to compare with income limits.
- **Remaining family members.** Remaining members of resident families are family members who stay in a unit after other members of the household leave. These members will be reevaluated for eligibility in accordance with Section 7. Agency regulations may require remaining tenants to move to a unit of appropriate size or exit the project.

6.6 ADDITIONAL REQUIREMENTS FOR ELDERLY UNITS, CONGREGATE HOUSING, AND GROUP HOMES

In addition to the requirements listed in paragraph 6.2, applicants for elderly units, congregate housing, or group homes must meet the additional requirements described below.

A. Elderly Units and Congregate Housing

In order to be admitted to elderly units or congregate housing:

- Applicants and tenants must qualify as an elderly household or be granted a waiver by the Agency. Waivers are permitted only under the following circumstances:
 - ◇ The borrower has made reasonable efforts to lease to elderly households.
 - ◇ The borrower has been granted approval by the Agency to lease to age-ineligible households. Agency approval will be of limited duration.
 - ◇ The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure.
 - ◇ The leasing to age-ineligible households will be for a limited period until the unit can be rented to an elderly household.
 - ◇ The borrower will continue efforts to locate eligible elderly households for tenancy.
- Nonelderly persons are eligible for occupancy as long as they are members of an elderly household and live in the same unit.
- Priority can be given to tenants who agree to participate in the services provided by the facility.

B. Group Homes

In order to be admitted to a group home:

- Applicants/tenants must be in need of the special services provided by the group home.
- Applicants must demonstrate a need for such housing and cannot be required to be a part of an ongoing training or rehabilitation program.
- Applicants must be selected from the market area prior to considering applicants from other areas.

A group home may limit occupancy to a specific group of tenants (e.g. eligible elderly tenants, developmentally disabled or mentally impaired tenants) if it is outlined in the borrower's management plan.

6.7 INELIGIBLE TENANT WAIVERS

The Agency may authorize the borrower in writing, upon receiving the borrower's written request with the necessary documentation, to rent vacant units to ineligible persons for temporary periods to protect the financial interest of the Government. Likewise, this provision may extend to a cooperative. This authority will be for the entire project for periods not to exceed one year. Within the period of the lease, the tenant may not be required to move to allow an eligible applicant to obtain occupancy, should one become available. The Agency must make the following determinations.

- There are no eligible persons on a waiting list.
- The borrower provided documentation that a diligent but unsuccessful effort to rent any vacant units to an eligible tenant household has been made. Such documentation may consist of advertisements in appropriate publications, posting notices in several public places, and other places where persons seeking rental housing would likely make contact; holding open houses; and making appropriate contacts with public housing agencies and organizations, Chambers of Commerce, and real estate agencies.
- The borrower agrees to publish a notice in the local newspaper to inform the public of the borrower's intent to temporarily rent apartments to all persons without regard to age or income restrictions.
- The borrower agrees to continue with aggressive efforts to locate eligible tenants and submit monthly reports of their marketing efforts to the Agency.
- The borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure and the Agency's approval of the waiver will be for a limited duration.

- That the lease agreement will not be more than 12 months, and at its expiration will convert to a month-to-month lease. The monthly lease will require that the unit be vacated upon 30 days notice when an eligible applicant is available.
- Tenants residing in RRH units who are ineligible because their adjusted annual income exceeds the maximum for the RRH projects will be charged the RHS approved note rate rental rate for the size of unit occupied in a Plan II RRH project. In projects operated under Plan I, ineligible tenants will be charged rental surcharge of 25 percent of the approved note rate rental rate.
- Tenants residing in off-farm LH units who are ineligible because their adjusted annual income exceeds the maximum for the area will be charged the lesser of the LH project's note rate rent or the prevailing market rent rate for the project. For on-farm tenants, rent determination may be subject to local discretion within limitations contained in 7 CFR 3560, subpart L. Excess rent will be deposited into the project's reserve account.

SECTION 2: CALCULATING INCOME AND INITIAL CERTIFICATION

6.8 CALCULATION OF TENANT INCOME

Borrowers use tenant income information to: (1) help determine whether an applicant is eligible to reside in multi-family housing; (2) calculate the applicant's ability to pay rent; and (3) determine the amount of rental assistance the household is eligible to receive. This section provides guidance for calculating and verifying income for each of these purposes.

A. Key Concepts for Income Determinations

1. *Income Definitions*

Two income definitions are used: annual income and adjusted income. Whenever income determinations are made, it is essential that borrowers use the correct income definition and consider income from the appropriate household members.

- **Annual income.** Annual income is used as the base for computing adjusted income. Income of all household members should be considered when computing annual income. **Attachment 6-A** can be used to determine which sources of income to count and which to exclude. *Form RD 1944-8, Tenant Certification* illustrates the calculation of annual income. Paragraph B provides additional information on calculating annual income.
- **Adjusted income.** Adjusted income is used to determine whether an applicant is income-eligible to reside in multi-family rental housing or to receive rental subsidies. For guidance on calculating adjusted income, see paragraph C below.

2. *Projecting Income for a 12-Month Period*

Current income and family circumstances may be used to estimate the household's income over the next 12 months, unless there is verifiable evidence of a likely change in circumstances. Historical information may be used to estimate income that is anticipated to be received for less than 12 months. For example, if one of the household members is a seasonal worker, the income attributable to that worker should be based upon past history, rather than annualizing current income.

Example—Annualizing Short-Term Income

Assume a family member who currently has no income historically has seasonal income during the summer months and earns on an average of \$4,000 during that time. Confirm with the applicant that the same seasonal pattern is expected and use historical data to project income for the coming 12 months.

3. *Income of Temporarily Absent Family Members*

Household members may be temporarily absent from the household for a variety of reasons, such as temporary military duty activation, temporary employment, or students who live away from home during the school year. The income of these household members is considered when computing annual income. Households with a member permanently confined to a hospital or nursing home may choose to either include annual income attributable to such person, less deductions for which the person would qualify, or exclude the annual income attributable to such person and not take any deductions for which the person would qualify.

Example—Temporarily Absent Member

James Brown and his wife have applied for a unit. At the moment, James is working on a construction job on the other side of the State and comes home every other weekend. He earns \$600/week and uses approximately one-third of that amount for temporary living expenses. The full amount of the income earned would be counted for both repayment and annual income.

B. Calculating Annual Income

Attachment 6-A, Annual Income Sources, provides a list of possible sources of income and indicates whether each source is counted for or excluded from annual income.

C. Calculating Adjusted Income

Adjusted income is used to determine eligibility for multi-family housing programs, as well as eligibility for and the amount of payment subsidies under Rental Assistance.

Adjusted income is calculated by subtracting from annual income any of five deductions that apply to the household. Not all households are eligible for all deductions. Exhibit 6-2 summarizes these deductions. The remainder of this paragraph provides guidance on determining whether a family is eligible for each deduction and verifying and calculating these amounts.

Exhibit 6-2

Allowable Deductions from Annual Income

Deduction	Elderly Households	Nonelderly Households
Dependent Deduction	Yes	Yes
Child Care Expenses	Yes	Yes
Elderly Household	Yes	No
Medical Expenses	Yes	No
Disability Assistance	Yes	Yes

1. *Dependent Deduction*

A deduction from annual income of \$480 is made for each household member who qualifies as a dependent. Dependents are members of the family who are not the head or spouse, and who are age 17 or younger, an individual with a disability, or a full-time student. If an applicant requests a deduction for dependents attending school full time, the applicant must provide documentation from the school that the dependent is enrolled as a full-time student.

2. *Child Care Expenses*

Reasonable unreimbursed child care expenses for the care of children age 12 and under are deducted from annual income if: (1) the care enables a family member to work or go to school; (2) no other adult household member is available to care for the children; and (3) in the case of child care that enables a family member to work, the expenses deducted do not exceed the income generated by that household member. If the child care provider is a household member, the cost of the children's care cannot be deducted.

To qualify for the deduction, the applicant must:

- Identify the children who are receiving the child care and the family member who can work or go to school as a result of the care;
- Demonstrate that there is no adult household member available or able to care for the children;
- Identify the child care provider, the hours of child care provided, and the costs; and
- If the expenses enable a family member to go to school, identify the educational institution. The family member need not be a full-time student.

Verification of Child Care Expenses

The child care hours must parallel the hours the family member works or goes to school. Appendix 2 provides a sample format tenants can use to document child care. Other acceptable formats include a letter on the child care provider's letterhead or a copy of a signed child care contract.

3. *Elderly Household Deduction*

A single \$400 deduction is made from annual income for any elderly household. To be considered an elderly household, the head of household, spouse, or sole member of a family who is party to the note must be 62 years of age or older, or an individual with a disability.

In the case of a family where the deceased applicant or spouse was at least 62 years old or an individual with disabilities, the surviving household may continue to reside in a housing project after the departure or death of the tenant or co-tenant, provided that:

- They are eligible with respect to adjusted income;

- The surviving household member occupied the dwelling with the deceased family member at the time of death;
- They execute a tenant certification form establishing their own tenancy; and
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Nonelderly or nondisabled surviving members of an elderly or disabled household are not entitled to the elderly family adjustment to income.

4. Deductions for Disability Expenses

Reasonable expenses for the care of an individual with disabilities in excess of three percent of annual income may be deducted from annual income if the expenses:

- Enable the individual with disabilities or another family member to work;
- Are not reimbursable from insurance or any other source; and
- Do not exceed the amount of income earned by the person who is able to work as a result of the expenses.

Typical Disability Assistance Expenses

- Care attendant to assist an individual with disabilities with activities of daily living directly related to permitting the individual or another family member to work.
- Special apparatus, such as wheelchairs, ramps, adaptations to vehicles or work place equipment, if directly related to permitting the individual with disabilities or another family member to work.

Along with other forms of documentation, to qualify for this deduction, applicants must identify the individual with a disability on the application. *Form RD 1944-4, Certification of Disability or Handicap* could be used to request verification of the individual's disability from a physician or other medical professional.

5. Deduction for Medical Expenses (for elderly households only)

Medical expenses may be deducted from annual income for elderly households if the expenses: (1) will not be reimbursed by insurance or another source; and (2) when combined with any disability

Typical Medical Expenses

- Services of physicians other healthcare providers
- Services of hospitals other healthcare facilities
- Medical premiums
- Prescription and nonprescription medicine
- Dental expenses
- Eyeglasses and eye examinations
- Medical or health products or apparatus (hearing aids, wheel chairs, etc.)
- Live-in or periodic medical care (e.g., visiting nurses or care attendants)
- Bandages, syringes, continence shields, and other nonprescription items recommended by a physician
- Periodic payments on accumulated medical bills

assistance expenses are in excess of three percent of annual income.

If the household qualifies for the medical expenses deduction, expenses of the entire family are considered. For example, if a household included the head (grandmother, age 64), her son (age 37), and her granddaughter (age 6), the medical expenses of all three family members would be considered.

One of the most challenging aspects of determining allowable medical expenses is estimating a household's medical expenses for the coming year. While some anticipated expenses can be documented easily (for example, Medicare or other health insurance premiums and ongoing prescriptions), others need to be estimated. The borrower should use historical information about medical bills to estimate future expenses. However, the estimates should be realistic. For example, if the household has a significant medical bill, the borrower would count only that portion of the bill that is likely to be paid during the coming year.

Example - Calculating the Medical Expense Deduction

The Jensons are an elderly household with annual income of \$25,000 and anticipated medical expenses of \$3,000 that are not covered by insurance or another source. The allowable medical expenses would be:

Total Medical Expenses	\$3,000
(less) 3% Annual Income (\$25,000 x 0.03)	<u>-\$ 750</u>
Allowable Medical Expenses	\$2,250

6.9 EVALUATING APPLICANTS' ASSETS

Assets can affect an applicant's ability to be qualified as an eligible tenant. Many types of assets generate income that must be included in the calculations of annual income. Exhibit 6-3 presents a list of assets that must be considered when making these determinations and also identifies certain types of assets that are not considered.

A. Reporting Assets

Applicants must provide information about household assets at the time of application and whenever an income is re-verified. Applicants must provide sufficient information to enable the borrower to verify the asset information and compute the market and cash value of the asset. *Form RD 1944-62, Request for Verification of Deposit* provides basic information held by a lender about borrower assets. Borrowers may use their own verification request forms.

Exhibit 6-3

Types of Assets

The following types of assets must be considered.

Nonretirement assets including:

- Savings accounts and the average six-month balance of checking accounts;
- Stocks, bonds, savings certificates, money market funds, and other investment accounts;
- Equity in real property or other capital investments;
- Trust funds that are available to the household;
- Lump sum receipts, such as inheritances, capital gains, lottery winnings;
- Personal property (such as jewelry) held as an investment; and
- Cash value of life insurance policies.

Retirement assets including:

- Amounts in voluntary retirement plans that can be withdrawn, such as individual retirement accounts (IRAs), 401(K) plans, and Keogh accounts; and
- Amounts in other retirement and pension plans that can be withdrawn without retiring or terminating employment.

The following types of assets are not considered.

- The value of necessary items of personal property, such as furniture and automobiles;
- Assets that are part of any business, trade, or farming operation in which any member of the household is actively engaged;
- The value of an irrevocable trust fund, or the value of any trust over which no member of the household has control; and
- Interests in American Indian trust land.

B. Calculating Market and Cash Value

The **market value** of an asset is simply its dollar value on the open market. For example, the market value of \$2,000 in a savings account is \$2,000 and the market value of real estate is its appraised value. The **cash value** of an asset is the market value, less reasonable expenses to convert the asset to cash. For example, the cash value of stock worth \$5,000 would be \$5,000 less any broker's fee.

C. Retirement Assets

Retirement assets are savings and investments that have been specifically designated as retirement funds. Not all retirement assets are considered. If the applicant can receive the retirement funds only by borrowing them, or upon retirement or termination of

Example—Calculating Cash Value of An Asset

Mr. Smith has \$10,000 in an IRA account. The account's market value is \$10,000. But in order to withdraw funds from the account, Mr. Smith must both pay a withdrawal penalty and taxes on the amount withdrawn.

The cash value of the IRA account is:

	\$10,000	Market value
less	200	Withdrawal penalty
less	2,000	Tax
	\$7,800	Cash Value

employment, the funds are not counted as assets for determining income. If the applicant can withdraw retirement funds without retiring or terminating employment, the funds are counted as assets, even though penalties may apply.

D. Calculating Income from Assets

For the purpose of computing annual income, the assets of **all household members** are considered. In addition, if any household member has disposed of assets for less than fair market value during the two years preceding the effective date of certification or recertification, the asset must be considered when calculating income from assets for annual income.

1. Two Methods for Calculating Income from Assets

Two different methods of calculating income from assets are used, depending upon the total cash value of household assets:

If the cash value of total assets is \$5,000 or less, the amount of asset income included in annual income is the actual income to be derived from these assets.

If the cash value of total assets is more than \$5,000, the amount of asset income included in annual income is the greater of: (1) the actual income to be derived from the assets; or (2) an imputed income from assets that is calculated by multiplying the total cash value of assets by the current HUD rate of two percent. Generally, the imputed income from assets is larger than the actual income to be derived from the assets when an applicant owns non-income-producing assets of significant value.

Example—Income from Assets for Annual Income Calculation

Charles and Patty Brown, both age 40, have applied for a Section 515 unit. The Brown family has the following assets.

A certificate of deposit of \$6,800 they have been saving for a down payment. It earned 6.8 percent or \$462 of interest last year. Estimated cash value after paying penalties is \$6,500.

A savings account of \$4,000 earning four percent interest annually.

The six-month balance in the checking account is \$300 (non-interest-bearing account).

The cash value of the Browns' assets is \$10,800 (\$6,500 + \$4,000 + \$300). However, the Browns will be required to use \$3,300 toward the purchase of a car so that Mr. Brown may get to work. Therefore, the cash value of assets to be counted toward income from assets is \$7,500. The cash value of the remaining assets is more than \$5,000. To compute income from assets, use the greater of actual income or imputed income.

	Cash Value	Actual Income Earned	Imputed Income
Checking Account	\$300	\$0	\$150 (\$7,500 x 0.02)
Certificate of Deposit	\$6,500	\$442 (\$6,500 x 0.068)	
Savings (\$4,000 - \$3,300 down payment)	\$700	\$28 (\$700 x 0.04)	
Total	\$7,500	\$470	

2. *Assets Disposed of for Less than Fair Market Value*

Applicants who dispose of assets for less than fair market value have, in essence, voluntarily reduced their ability to afford housing. Therefore, assets disposed of for less than fair market value during the two years preceding a determination of annual income must be used in the annual income calculation. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are not included in this calculation.

The amount of income to be included in annual income is the difference between the market value of the asset and the amount that was actually received (if any) in the disposition of the asset.

Example—Valuing a Disposed Asset

An applicant sold a property to a relative for \$15,000 on July 1, 1996. The property was valued at \$30,000 and had no loans against it.

Market value	\$30,000
(Less) Settlement costs	\$2,000
(Less) Sales price	<u>\$15,000</u>
Cash value	\$13,000

The \$13,000 would be counted as an asset for any annual income determination conducted until July 1, 1998. Even though there would be no actual income from this asset, the \$13,000 would be used to establish total assets to determine the amount to be counted as annual income.

6.10 CERTIFICATION AND VERIFICATION PROCEDURES

Each applicant must provide the income, expense, and household information needed to enable the borrower to make income determinations. Most of this information should be provided on the application, but some additional follow-up with the applicant may be required. The borrower must verify information provided by the applicant prior to admission.

A. Certification Procedures

The borrower is not required to complete a tenant certification for every applicant that applies for occupancy at the property, only for those who will likely be placed in a unit when it becomes vacant. When it becomes necessary to certify an applicant for admission to the property, the borrower and the applicant will complete *Form RD 1944-8, Tenant Certification*. Using the information submitted by the applicant during the application process and any additional information that needs to be updated at the time of certification, the borrower will use the *Form RD 1944-8* to calculate annual income and adjusted income and finally the tenant rent payment (in accordance with Chapter 7).

In projects that are receiving assistance from other sources that are also required to certify tenant incomes, the Agency may agree to accept an alternate agency's certification documentation, if it provides the same level of information as required by the Agency.

B. Verification Requirements

Verification of employment income as well as any household income from sources other than employment must be verified by the borrower prior to submission of the Tenant Certification to the Agency. Each applicant must sign a request for verification of

employment at the time of application. Copies of this form must accompany any request for verification from third-party sources. Written verifications provided by third-party sources or documents prepared by third-party sources are generally preferred. Oral verifications, if accepted, must be documented carefully.

Written income-related verifications are valid for 90 days and may be valid for an additional 90 days with oral reverification at the end of the 90-day period. In no case may information that is older than 180 days be used.

When it is not immediately possible to obtain the written verification from the income source, the income may be temporarily verified by actually examining the income checks, check stubs, or other reliable data the person possesses which indicates gross income. Income verification is required for tenants of Off-Farm Labor Housing: domestic laborers including migrant farmworkers. Income verification is not required for tenants of On-Farm Labor Housing.

Farm labor employment verification is required for all domestic farm laborers, whether they are year-round, seasonal, or migrant farmworkers, or farmworkers living in On-Farm Labor Housing.

Third party verification of income and employment, as applicable, is required whenever it is possible or available.

When third party verification of income and employment is not possible or available, the applicant or tenant may provide the borrower with an award and benefit letter, cost of living adjustment notice, benefit statement, bank statement, or actual benefit check. Using this documentation, the borrower may “self-certify” the farmworker’s application using any available documents or records the applicant may have or information the applicant can provide. In the absence of available income and employment records, the borrower may forecast income expected to be received by the tenant during occupancy for determining eligibility and Rental Assistance.

C. Verification Procedures

The borrower must establish verification procedures to review applicant information. The procedures must ensure accurate determinations of eligibility and respect the confidentiality of all information on applicants and residents.

1. Information to Verify

The borrower must verify the following information:

- **Disability:** Disabilities are verified only if necessary to qualify the household as an elderly family, or if a disability affects the household's eligibility for deductions from income. Verification may be provided by a physician, a clinic, welfare agency, the Social Security Administration, or other knowledgeable service.
- **Household composition:** Verification of household composition can be accomplished through a variety of sources and documents. For example, a birth

certificate or custody agreement verifies that a minor child is part of the household. Also, divorce or separation agreements can verify that an individual is no longer a member of the family.

- **Income:** Procedures for verifying income are described below in Exhibit 6-4.
- **Citizenship status:** Proper documentation of citizenship is discussed in Section 6.4. If the tenant indicated that he/she is an alien, the borrower must verify tenant's status with the INS. The tenant must sign a declaration indicating status, and whether or not status has changed, on an annual basis.

Exhibit 6-4

Income Verification Requirements and Procedures

- **Income Tax Return:** A complete, legible copy of the most recently filed Federal income tax form must be submitted for each applicant, unless the person was exempted from filing a return.
- **Verification of Employment:** After the applicant signs *Form RD1910-5, Request for Verification of Employment*, or similar form developed by the borrower, the Agency must send this form to each employer for verification of employment of each household member.
- **Self-Employed Persons:** Self-employed applicants must provide current documentation of income and expenses, which cannot be older than the previous fiscal year. The Agency must compare the income and expenses information provided by the applicant with the latest income tax return and clarify and discrepancies.
- **Unemployment and Unemployment Benefits:** Unemployed applicants must complete *Form RD 3550-4, Employment Certification/Payment Assistance*, or similar form developed by the borrower, which provides their current employment status and requires them to agree to inform the Agency immediately, in writing, if their employment status changes. Applicants receiving unemployment benefits must provide the most recent award or benefit letter prepared and signed by the authorizing agency to verify the unemployment income.
- **Regular, Unearned Income (e.g., Social Security, pensions, workers compensation):** Applicants must provide a copy of the most recent award or benefit letter prepared and signed by the authorizing agency. Information must be updated every twelve months to account for cost-of-living increases or changes in benefits.
- **Public Assistance:** Applicants must provide a copy of the most recent award or benefits letter prepared and signed by the authorizing agency to verify the amount of public assistance received.
- **Alimony or Child Support Payments:** The applicant must provide a copy of the divorce decree, separation agreement, or other document indicating the amount of the required support payments. The applicant must also report the amount received during the past twelve months. If the applicant reports that the amount required by the agreement is not being received, the applicant must document that assistance has been requested from the state or local entity responsible for enforcing payment.
- **Support for Foster Children or Adults:** Payments received for the care of foster children or foster adults may be considered when calculating repayment income. Documentation must be provided indicating the amount of money received for the care of foster children or adults, and the anticipated period of time the support will be provided.
- **Verification of Assets and Income from Assets:** The Agency sends Form RD 1944-62, Request for Verification of Deposit, to financial institutions to verify account balances. For some assets such as mutual funds or 401(k) accounts, copies of year-end statements can provide information about annual income. Applicants must certify whether any asset has been disposed of for less than fair market value.

2. Release and Consent Form

Form RD 1910-5, Request for Verification of Employment (or similar form developed by the borrower), gives applicants or residents permission for the borrower to ask questions about and verify information, related to, the family's income and other circumstances that affect eligibility and the amount the family must pay. Applicants must sign the form as a condition of admission and continued occupancy.

The form must be signed by the family head and all other family members whose income, assets, or other circumstances require verification. As long as the borrower retains the form with original signatures in its file, a photocopy of the authorization may be provided to verification sources.

The borrower must ask applicants/residents to execute the form even in cases where the person has not reported any income.

3. Social Security Numbers

Prospective tenants must provide the borrower with Social Security Numbers for every tenant or co-tenant in the household. The borrower may use Social Security Numbers to verify income information that is provided. Social Security Numbers must be verified only once for each resident.

Documentation of the Social Security Number may be provided with a valid Social Security card or other evidence of the Social Security Number, such as a driver's license. If the documentation is sent by mail, the applicant may submit a photocopy.

If the applicant does not have the documentation, the applicant should submit a signed certification stating his/her Social Security Number. The applicant then has 60 days to submit acceptable documentation of the Social Security Number. This 60-day period can be extended for another 60 days for elderly applicants.

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SECTION 3: OCCUPANCY POLICIES AND OCCUPANCY RULES [7 CFR 3560.157]

6.11 OCCUPANCY POLICIES

The purpose of the occupancy policy in a multi-family property is to establish:

- Unit density standards.
- Procedures for assigning units.

A. Unit Density Standards

Occupancy policies set standards regarding the number of people that can be adequately housed in a unit of a particular size. In developing the occupancy policy for each unit, the borrower must take into account the following:

- State and local codes regarding the number of persons permitted to dwell in a unit of a particular size;
- The size of the rooms in the particular unit;
- Procedures for sizing households for different unit types (how to consider temporarily absent household members); and
- The order in which the property will house eligible applicants and rehouse existing tenants.

For some properties, State and local codes regarding occupancy standards may not exist. In these cases, the borrower should make a judgment as to how many people may be adequately housed, basing it on the square foot size and layout of the unit. For example, some properties may have several types of two-bedroom units. If one is 600 square feet and the second type is 900 square feet, the borrower may have different occupancy policies for the different unit types. An example of what an occupancy policy might look like for the above example is detailed below:

Unit Type	Minimum Density	Maximum Density
2 Bedroom (600 sq. feet)	1 person	3 persons
2 Bedroom (900 sq. feet)	2 persons	4 persons

The following is an ideal range of persons per housing unit:

Number of Bedrooms	Occupancy Density Range	
	Minimum	Maximum
0	1	1
1	1	2
2	2	4
3	3	6
4	4	8
5	5	10

A borrower with a project that has no one-bedroom units may make an exception to the minimum threshold requirement.

B. Procedures for Assigning Units

Occupancy policies also establish the order in which eligible applicants and existing tenants will be housed or rehoused.

Borrowers are required to comply with Section 5 in selecting and assigning applicants to new units or relocating over- or under-housed existing tenants. However, it is important that these requirements are detailed in the borrower's occupancy policies, so that it is clear to new applicants and existing tenants how a vacant unit will be assigned.

6.12 AGENCY REVIEW AND MONITORING OF OCCUPANCY POLICIES

The Agency must concur with the borrower's occupancy policies prior to initial occupancy of the project and in all future modifications. In reviewing the policies, the Agency must assure that the standards are in compliance with state and local laws and that they appear reasonable based on the unit size and type. The Agency should review compliance with the policies during the annual compliance review. If a household is residing in the property and is out of compliance with the occupancy policy, the borrower must follow procedures outlined in paragraph 6.29 for ineligible tenants.

6.13 OCCUPANCY RULES

The purpose of the occupancy rules is to establish the basis for the tenant and management relationship.

A. Basic Rules

Exhibit 6-5 lists the basic items that borrowers must address in the occupancy rules for their projects.

Occupancy rules for each project will be in writing, attached to each tenant's lease upon initial occupancy, and posted in a central location (such as a central mail location) so that tenants may easily access the information. Modifications to these rules will be

provided to the tenant at least 30 days prior to implementation and in accordance with the requirements of Section 8.

B. Pets

The borrowers occupancy rules should be specific with regard to the project's pet rules and policies. The following items should be consistently implemented at the project and specifically addressed in the occupancy rules:

- The types of pets allowed and not allowed in the units. Some borrowers may allow cats but not dogs.
- The amount of the pet deposit to be charged at lease execution.
- The rules under which a pet may be required to be removed from the property.

Exhibit 6-5

Required Items for Multi-Family Housing Occupancy Rules

At minimum, the occupancy rules should include:

- An explanation of the tenant's rights and responsibilities under the lease or occupancy agreement.
- The rent payment or occupancy charge policies.
- The policies regarding periodic inspection of units.
- The system for responding to tenant complaints.
- The maintenance request and work order procedures.
- The project services and facilities available to tenants or members.
- The office locations, hours, and emergency telephone numbers.
- The restrictions on storage and prohibitions on abandoning vehicles in the project area.
- The way to obtain community and public transportation schedules.
- The policies regarding guests that become household members.
- Other requirements related to the subsidy provided to the tenant from non-Agency sources.

Regardless of the occupancy rules established for the project, the borrower must adhere to the following:

- Borrowers must not prohibit elderly households from keeping domestic animals in their unit.
- Borrowers must not prohibit animals who provide assistance to the handicapped or disabled from residing in the unit with the person to whom the animal is providing assistance.

However, the borrower may require the household to pay a pet deposit in the two situations described above.

C. Tenant Organizations

In developing and implementing the occupancy rules, borrowers must not infringe on the rights of tenants to organize an association of tenants. The project manager (or designated management representative) should be available and willing to work with a tenant organization.

Borrowers may not unreasonably withhold the use of community rooms or other available space within the project when requested by:

- A resident organization in connection with the representational functions of the organization; or
- Residents seeking to organize or to collectively consider any matter pertaining to the operation of the project.

D. Community Rooms

In developing the occupancy rules, borrowers must not place unreasonable restrictions on tenants that desire to use Federally-financed community rooms for their enjoyment. While a schedule of fees may be developed for the use of the community space, fees should be reasonable and meant only to cover the costs of cleaning and maintenance of the facility being used.

6.14 AGENCY REVIEW AND MONITORING OF OCCUPANCY RULES

Borrowers must obtain approval from the Agency prior to the implementation of the occupancy rules, and must obtain Agency concurrence before making any modifications to the rules. In submitting the rules to the Agency for review and approval, borrowers must obtain a certification from an attorney that the occupancy rules are in compliance with Agency requirements and with state and local laws.

If tenants believe the borrower is in violation of occupancy rules, they must be directed to follow the procedures outlined in Section 8.

The Loan Servicer will review compliance with the occupancy rules during the compliance review. In a situation where the Loan Servicer believes management is in violation of the occupancy rules, the Agency must state the violation as a finding and require the borrower to resolve the problem in a specified time frame.

In situations where the tenant is in violation of the occupancy rules and the tenant fails to correct the problem, the borrower should proceed to evict the tenant for material noncompliance with the lease. In the event that an eviction action is filed with the court, the borrower is required to set up an escrow account for the rent paid by the tenant. Borrowers are required to continue to collect rent during eviction proceedings.

SECTION 4: MARKETING AND APPLICATION PROCESSING *[7 CFR 3560.104 and 7 CFR 3560.154]*

6.15 REQUIREMENTS FOR AFFIRMATIVE FAIR HOUSING MARKETING PLANS

Borrowers with four or more units are required to prepare and maintain an Affirmative Fair Housing Marketing Plan (AFHMP) using *Form HUD 935.2*. The purpose of this plan is to set forth how the borrower will meet their Fair Housing responsibilities. This plan will be submitted to the Agency for approval prior to loan closing. The Agency may also require periodic modifications to the plan if implementation of the plan is not reaching the population groups targeted by the plan. At a minimum, the plan will address the following:

- Outreach efforts of the property
- Marketing strategies
- Education and Training of all staff on Civil Rights laws (e.g., Title VI, Fair Housing, Section 504, Title IX).

The approved plan must be posted by the borrower in a prominent location for public inspection. This could include the project site, the rental office, or other location where applications are received for the property.

The borrower must develop and maintain a system for conducting self-assessments of the property staff's performance in implementing an approved AFHMP.

6.16 AGENCY REPORTING

The Agency is required to annually submit to Congress a report regarding implementation of the AFHMPs. The report is based on information that tenants are required to submit annually on their tenant certification.

6.17 AGENCY MONITORING AND REVIEW OF THE AFHMP

The Loan Servicers and State Civil Rights Coordinator/Manager (SCRC/M) will review the AFHMP during the compliance review process to assure the plan is effectively reaching all target populations. In conducting this review, the Loan Servicers will inspect applications received and interview current residents to obtain an understanding of how they obtained information regarding the property. If certain targeted populations appear to be lacking in requesting or submitting applications, the Loan Servicers and SCRC/M will require the owner to modify the AFHMP marketing and outreach sections to enhance efforts to reach such groups.

6.18 APPLICATION REQUIREMENTS AND PROCESSING

The purpose of the tenant application process is to collect enough information regarding the household status to determine applicant eligibility for the specific property. This information should also be comprehensive enough for the borrower to make a determination about waiting list placement.

A. Application Forms

Borrowers may develop their own application form in accordance with the requirements of Exhibit 6-6. The borrower must retain application forms for at least three years.

Exhibit 6-6

Minimum Requirements for a Tenant Application

- Name and present address;
- Household income information—this includes all information from sources which would be counted in calculating annual income (see Section 6.3 of this chapter);
- Number of household members—this includes all members who would live in the dwelling unit, even those who would only live there on a part-time basis;
- Indication of a need for a handicap accessible unit and/or handicap or disability adjustments to income;
- Applicant certification that the unit will serve as the household's primary residence;
- Taxpayer identification/social security number (although applicants are not obligated to provide this information);
- Adjustments to income for which the household may qualify. These should be verified in accordance with paragraph 6.9;
- Signature and date;
- Race, ethnicity, and gender designation; and
- Disclosure notice.

Recipients using application forms must establish a section at the end of the form, below the signature and date block, to collect race/national origin/gender information. In addition, the following disclosure notice must be included:

The information regarding race, ethnicity, and sex designation solicited on this application is requested in order to assure the Federal Government, acting through the Rural Housing Service, that the Federal laws prohibiting discrimination against tenant applications on the basis of race, color, national origin, religion, sex, familial status, age, and disability are complied with. You are not required to furnish this information, but are encouraged to do so. This information will not be used in evaluating your application or to discriminate against you in any way. However, if you choose not to furnish it, the owner is required to note the race, ethnicity, and sex of individual applicants on the basis of visual observation or surname.

Please identify your ethnicity, race, and sex as follows:

[LIST THE RACE AND ETHNICITY CATEGORIES AS FOUND ON THE AGENCY TENANT CERTIFICATION FORM.]

Borrowers must establish and maintain a specific place and time where applications will be accepted. This information should be posted in a central location on the property. It must also be documented in the Management Plan and the AFHM plan and to the greatest extent possible communicated through outreach and marketing efforts.

B. Maintaining Waiting Lists

When an applicant submits an application form, the borrower must place the applicant on the waiting list. All applications—whether complete, incomplete, eligible, or ineligible—must be placed on the list. The waiting list will document the final disposition of all applications (rejected, withdrawn, or placed in a unit).

1. Incomplete Applications

If an applicant submits an incomplete application, they must be notified in writing within 10 calendar days of the items needed for the application to be considered complete and that priority will not be established until the additional items are received.

2. Selecting Applications from the Waiting List

Once an applicant has submitted a complete application and signed *Form RD 1910-G, Request for Employment Verification* (or a similar form developed by the borrower), the date and time must be recorded on the waiting list to establish priority for selection. Selection from the waiting list will be made according to date and time in the following order:

- Very low-income applicants;
- Low-income applicants; and
- Moderate-income applicants.

See paragraph 6.3 for information regarding how to determine the specific income level of an applicant.

The procedures used by the borrower to purge the project's waiting list must be described in the project's management plan. These procedures must be based on the length of the waiting list or the extent of time the applicant will be expected to wait for housing.

6.19 REJECTION OF APPLICATIONS

Borrowers may deny admission for criminal activity or alcohol abuse by household members.

Borrowers are required to notify all applicants in writing of their initial eligibility or ineligibility within 30 days of receipt of a completed application. If applicants are determined to be ineligible, the rejection letter must outline the reason for rejection of the application and their

right to appeal such a decision in accordance with 7 CFR Part 3560.154. The rejection letter must advise the applicants of their right to appeal the decision within 10 calendar days, as well as the right to a hearing. If the project is located in an area with a high concentration of non-English speaking individuals, the letter must be in English and the non-English language that is prevalent in the area. When an applicant is rejected due to credit bureau reporting information, the source of the credit bureau must be revealed to the applicant in accordance with the Fair Credit Reporting Act.

6.20 AGENCY REVIEW AND MONITORING OF APPLICATION PROCESSING

In reviewing the application process employed by the borrower, the Agency should review the following:

- Is adequate documentation available to determine compliance with applicant processing requirements?
- Are applicants properly informed of where applications may be obtained and submitted?
- Does the application provide the borrower with adequate information to determine the applicant's place on the waiting list?
- Is there an element in the application process that discourages targeted populations from submitting an application? If so, will modifying the application process encourage targeted, but underserved populations to apply?
- Are applications processed in a timely manner? Are applicants notified within 30 days if they are determined eligible or ineligible, based on the information in the application?
- Are ineligible applicants adequately notified of their appeal rights under 7 CFR 1900, subpart B?

Loan Servicers should review the application during the compliance review to ensure that adequate information is being obtained and that the above questions are answered to the satisfaction of the Agency.

SECTION 5: TENANT SELECTION AND UNIT ASSIGNMENT *[7 CFR 3560.154 and 7 CFR 3560.155]*

6.21 ASSIGNING AN AVAILABLE UNIT

Once a unit becomes available, the borrower must decide who is entitled to that unit based on a variety of factors.

Eligible tenants residing in the property who are either under-housed or over-housed receive priority over new applicants if relocating them into the newly vacant unit would bring the household into compliance with the occupancy plan for the property. If there are no such over-housed or under-housed existing tenants, the borrower must select a new applicant from the waiting list to fill the newly vacant unit. The borrower must use the project's occupancy policy to look at applicants on the waiting list who are eligible based on the unit size. From that universe, the borrower must then determine, based on income levels and priorities, which applicant is entitled to the unit. The order in which applicant households are entitled to housing depends on two factors:

- The income level of the household; and
- The priorities for which the household may qualify.

When an applicant first submitted an application, the borrower made an initial determination as to whether the household was very low-, low-, or moderate-income. Based on this assessment, the applicant was assigned to the very low-, low-, or moderate-income waiting list. When looking for the next eligible tenant for the vacant unit, the borrower must first go to the very-low income waiting list. If there are no applicants on the very low-income waiting list who qualify for the vacant unit based on the property's occupancy policy, then the borrower may go to the low-income waiting list. Only if there are no eligible applicants for the unit on the low-income waiting list may the borrower select an eligible applicant from the moderate-income waiting list.

6.22 PRIORITIES FOR UNITS

A. Exceptions to Income Standard Assignment Policies

While the basic standard is to house all very low-income applicants prior to low- and then moderate-income applicants, there are two situations where this process could be bypassed.

- If the unit is a handicapped accessible unit, then an eligible household that needs the features of that unit will receive priority over all other applicants, regardless of income. If more than one applicant needs the features of the handicapped accessible unit, then applicants who are very low-income would have priority, followed by low- and then moderate-income households.

- In congregate housing facilities, applicants who qualify for and agree to utilize the services provided by the facility will be housed over all other applicants on the waiting list. Where there is more than one applicant that meets this criterion, the applicants meeting this condition will be ranked by very low-, low-, and moderate-income and housed in accordance with the occupancy policies established at the property.

Example

Project B has two handicapped accessible units. There are three handicapped individuals who need the features of the handicapped accessible units on the waiting list: one moderate income and two low-income. The property has a waiting list of 20 very low-income applicants. The borrower must rent the two handicapped accessible units to the two low-income applicants.

Project Z is a congregate housing facility and has a vacant one-bedroom unit. There are three individuals eligible for a one-bedroom unit on the waiting list: two very-low income applicants and one low-income applicant. All qualify for congregate care services. Only one of the very low-income applicants, however, would agree to use the congregate care facilities. The borrower would have to offer one of the vacant units to the very low-income applicant who agrees to use the services and the other unit to the low-income applicant who agrees to use the services.

Holders of Letter of Priority Entitlement (LOPE), persons displaced by Agency action, or displaced persons in a federally declared disaster area have priority over all other applicants of the individual applicant's income group. However, an individual in one of these three categories would not be eligible for housing before applicants on the waiting list for a lower income category.

Example

Project C has a vacant three-bedroom apartment. There are no applicants eligible for a three-bedroom unit on the very low-income waiting list. There are 20 applicants eligible for a three-bedroom unit on the low-income waiting list. A holder of a LOPE applies for occupancy at the project. The applicant is low-income and qualifies for a two-bedroom unit. Despite the number of applicants on the waiting list, the borrower must offer the available unit to the holder of the LOPE and the LOPE holder agrees to move to the appropriate sized unit when one becomes available.

B. Assignment of Rental Units Accessible to Individuals with Disabilities

If a rental unit accessible to individuals with disabilities is available and there are no applicants that require the features of the unit, the borrower may rent the unit to a non-disabled tenant under the following conditions:

- The borrower must include a provision in the lease requiring the tenant to vacate the unit within 30 days notification from management that an eligible individual with disabilities requires the unit;
- The unit has been marketed as an accessible unit;
- Outreach has been made to organizations representing the disabled; and
- Marketing of the unit as an accessible unit continues after it is rented to a tenant who is not in need of the special design features.

6.23 AGENCY MONITORING AND REVIEW OF UNIT ASSIGNMENT

The selection and assignment of units is one of the most important aspects to managing a property. Agency staff must assure on-site management staff are well versed in Agency policy and guidance regarding this subject or require the borrower to modify the management plan to reflect increased training in this area. The Loan Servicers will review the waiting lists and completed applications to ensure that:

- Units which are not needed to rehouse existing tenants are first offered to eligible very low-income families.
- Units are offered to households in accordance with the borrower's occupancy policy.

If Loan Servicers find that the borrower or the agent is failing to follow Agency policy in assigning available units, Loan Servicers may require the borrower modify the management plan to clearly reflect Agency policy and/or enhance the training of management staff responsible for assigning units.

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SECTION 6: DWELLING LEASES [7 CFR 3560.156]

6.24 OVERVIEW OF DWELLING LEASES

A lease between the borrower and the lender is required to be executed before any tenant occupies a unit in a multi-family housing project. This section will provide information regarding how the borrower will develop that lease and what action is needed by the Agency before the lease may be used. The Agency must approve the lease before the borrower enters into a lease agreement with any tenant.

6.25 DEVELOPMENT OF A LEASE

The borrower is responsible for the development of the tenant lease that will be used at the property. This lease must contain the required items, provisions and clauses outlined in **Attachment 6-B** and must be free of prohibited clauses listed in **Attachment 6-C**. It must also be in compliance with State and local laws. If there are conflicting requirements between Federal, State, and local laws, the borrower must notify the Agency of the conflict and request guidance. Once a lease is developed by the borrower, the borrower's attorney must certify that the lease is in compliance with the requirements of 7 CFR 3560.156 and **Attachments 6-B** and **6-C** prior to submission of the lease to the Agency for concurrence. The Agency must concur with all leases proposed for use at an Agency-related property, prior to the use of that lease.

6.26 EXECUTION OF THE LEASE WITH THE TENANT

Prior to the occupancy of any unit by an applicant, the applicant and the borrower must execute a lease that has been concurred in by the Agency. Once a lease has been executed with the applicant, they are entitled to occupy the unit so long as they remain eligible and comply with lease renewal requirements. Expiration of the lease is not of itself grounds for a termination of tenancy.

6.27 AGENCY REVIEW AND MONITORING OF LEASE REQUIREMENTS

In addition to concurring in the lease, the Agency should review and monitor the implementation of the lease with the applicant/tenant to ensure that they are properly informed of their rights and responsibilities under the lease. During the compliance review process, the Agency should look to assure:

- The occupancy rules are attached to the initial lease;
- The applicant understands their rights to the tenant grievance process under Section 8 and 7 CFR 3560.160; and
- The applicant understands the process for relaying information such as maintenance requests and income information to management and the responsibility to do so in a timely manner.

If the Loan Servicer finds the borrower is failing to provide adequate information regarding the rights and responsibilities of the tenant and the management agent, the Loan Servicers should require the borrower to improve the management plan and training of on-site staff.

SECTION 7: TENANT RECERTIFICATION AND CHANGES IN ELIGIBILITY [7 CFR 3560.152 and 7 CFR 3560.158]

The recertification process developed in this section is designed to ensure a tenant remains eligible to reside in multi-family housing. As household status changes, the size of the unit needed by the family or the amount of rent that they are obligated to pay may change. This section discusses when a recertification is required and what action the borrower will be required to take if a household is determined ineligible to continue residing at the property.

6.28 REQUIREMENTS TO RECERTIFY TENANTS

A. The Annual Recertification Process

Each time a resident is recertified, the certification is good for one year, unless subpart 2 of this paragraph requires a recertification to be completed more frequently. At the end of the year the certification will expire and the borrower is required to recertify the household. Using the procedures outlined in Section 1, the borrower will complete a new certification. The key steps to this process include:

1. Notifying the Tenant of the Recertification Requirement

At least 90 days prior to the date that the certification expires, the borrower must notify the tenant in writing that they must be recertified in order to remain eligible to continue residence at the property. This letter will also include what information the borrower needs from the household in order to complete the certification.

If the household fails to respond to the letter in the first 30 days, then the borrower will issue a 60-day letter reminding the borrower of the time frames required for the recertification.

If the borrower still fails to respond to the 60 day letter, the borrower should issue a third letter 30 days prior to the date which the certification expires informing the tenant of the:

- Information needed to recertify;
- The time frame in which the new certification must be submitted to the Agency; and
- The consequences for failure to comply with the recertification process.

2. Execution of the New Certification

Upon receiving the information regarding household size and income from the tenant, the borrower will verify the information and the borrower and the tenant will complete a new *Form RD 1944-8, Tenant Certification*. This form will document the calculation of annual income and adjusted income (in accordance with Section 1) and the calculation of the tenant payment (in accordance with Chapters 7 and 8).

B. The Interim Recertification Process

Unless a change in the income of a household would result in a rent increase of \$25 or more per month, the borrower is not required to recertify the household prior to the annual recertification. This change in income could occur in one month, or it may occur over several months within the 12-month period covered by the certification.

If the change in income reported by the tenant in one month would lead to an increase in the tenant payment of greater than \$25, a new certification must be executed within 30 days of receipt of the information from the tenant. This certification must be submitted to the Agency no later than the first day of the month following the newly executed certification.

If several changes in income are reported by the tenant over a several month period, the borrower should track the changes in income until such time as they reach an amount that would lead to a change in the tenant payment of greater than \$25 per month. At the time when the cumulative amounts of the reported changes trigger the requirement to recertify, then the interim recertification would be required to be executed within 30 days and submitted to the Agency no later than the first of the month following the newly executed certification.

If a tenant reports that the household's adjusted gross income has decreased, and the determination is made that the household has an adjusted gross income of zero, the owner must immediately reexamine the household. The owner is required to reexamine the household's income three months from the previous zero-income reexamination unless the household has voluntarily notified the owner of a positive change in income during the interim and a subsequent reexamination has been prepared.

C. Submission of the Certification to the Agency

Once the borrower and the tenant execute a certification, it must be submitted to the Agency within 10 days of the effective date of the certification. If a borrower fails to submit a certification by the effective date, it will result in monetary penalties to the borrower as established in Chapter 7.

6.29 AGENCY REVIEW AND MONITORING OF THE RECERTIFICATION PROCESS

A. Agency Review

The recertification process is designed to ensure that Agency programs are serving income-eligible households on an ongoing basis. Loan Servicers review of the recertification process should be designed to ensure that recertifications are executed in a timely manner. The Loan Servicers should make the following assessments:

- Are tenants receiving the proper notice—at least 90 days in advance of the expiration of the current certification?

- Does the notice provide the tenant with a list of the information needed for the completion of the recertification process?
- Are borrowers accurately determining when an interim recertification is needed?
- Are interim recertifications being executed on a timely basis (i.e., no later than 30 days from the time the information is provided to the borrower)?
- Does the certification form provide the information needed by the Agency to determine that the tenant payment and rental subsidy have been calculated correctly?
- Is the borrower completing the verification of information on a timely basis?

If the Loan Servicer concludes that the borrower is deficient in recertifying existing tenants, the Agency must require the borrower and the management agent to modify existing practices and procedures to ensure a more timely delivery of recertifications to the Agency. This could include:

- Modifying the management plan to incorporate stronger or more specific procedures with regard to recertifications;
- Enhanced training for on-site staff in processing Agency certifications; and
- Stronger enforcement of the penalties for tenants who fail to comply with the recertification process.

B. Industry Interface

The Industry Interface is the mechanism by which borrowers submit tenant certifications to the Agency electronically on a monthly basis.

Within twelve months of the date of publication of the final regulation, for projects with eight units or more, all borrowers will be required to submit tenant certifications through the Industry Interface. The Agency may make an exception to this requirement if the borrower submits documentation that the costs associated with electronic submission of tenant certifications would pose a financial hardship to the project.

If the borrower is using the Industry Interface, certifications must be submitted by the tenth of the month for which they are due. For instance, if the borrower is submitting certification due in May with an effective date of May 1, the certifications must be electronically transmitted to the Agency between May 1 and May 10. If for any reason the borrower is unable to transmit the certifications electronically during a given month, best efforts must be made to submit the certifications by diskette or by mailing hard copies of the certifications to the Agency for receipt by the tenth of the month.

Borrowers who are not using the Industry Interface must either submit certifications on a diskette or hard copies to the Agency for receipt by the tenth of the month.

Regardless of the transmission method used—Industry Interface, diskettes, or hard copies—if the Agency does not receive certifications by the tenth of the month in which they are due, and the borrower has not notified the Agency that the transmission will be late, the borrower will be subject to overage penalty.

Attachment 6-D, Acquiring Automation Support for the Industry Interface or other Automation Needs, provides guidance on the allowable sources of funds for obtaining automation capabilities.

6.30 INELIGIBLE TENANTS

Ineligible tenants are those who, upon recertification, fail to meet either the income or the occupancy requirements for the unit and property that they currently occupy. Regulations require that tenants who are no longer eligible to reside at the property be given notice that they must vacate the property within 30 days or at the end of their lease, whichever is longer.

A. Continuation of Tenancy – Tenants Who Fail to Comply With the Occupancy Policy

In some situations, a tenant may be ineligible based on the size of the unit currently occupied, but could become eligible if shifted to a unit of a different size (either larger or smaller) within the property. In this situation, a tenant may continue tenancy as an ineligible tenant, but the borrower should relocate the household to the proper unit size as soon as a unit of that size becomes available.

In some cases, a household may require a unit size that is unavailable at the property. In this situation the tenant would be considered ineligible and required to vacate the property within 30 days or at the end of their lease, whichever is longer.

B. Continuation of Tenancy – Tenants Who Fail to Comply With the Income Requirements for the Property

In most cases, if tenants' certifications indicate that they no longer comply with the income limits set for the property, they must be notified about vacating the property in 30 days or at the end of their lease, whichever is longer.

In two specific situations, borrowers may permit ineligible households to reside at the project ***with prior Agency approval***:

- The waiting list for the specific unit type has no eligible tenants; or
- The required time period for vacating the unit would create a hardship on the family.

Elderly households with incomes above the moderate-income level may occupy projects with an Agency loan approved prior to 1968 with a loan agreement that does not restrict occupancy by income.

C. Cooperative Members

Any persons who are eligible members of a cooperative will not be considered ineligible or subsequently deprived of their membership by reason of no longer meeting the income-eligibility requirements as defined in 7 CFR 3560.152.

D. Remaining Household Members

Members of a household residing in a multi-family project may continue to occupy the unit after the departure of the original tenant, regardless of age, provided that:

- They are eligible with respect to income.
- They were either a co-tenant or member of the household and have the legal capacity to sign the lease.
- They occupied the unit with the original tenant at the time the original tenant died or departed.
- They sign a succeeding tenant certification establishing their own tenancy.
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Remaining household members that are over-housed must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit does not exist at the property, the tenant will be required to vacate the property in accordance with paragraph 6.29 A.

E. Surviving Household Members

Members of an elderly household residing in an elderly project may continue to occupy the unit after the death of the original tenant, regardless of age, provided that:

- They are eligible with respect to income.
- They were either a co-tenant or member of the household and have the legal capacity to sign the lease.
- They occupied the unit with the original tenant at the time the original tenant died or departed.
- They sign a succeeding tenant certification establishing their own tenancy.
- They have the legal ability to sign a lease for the rental unit, except where a legal guardian may sign when the tenant or member is otherwise eligible.

Surviving household members that are over-housed may remain in the unit, but must move to a suitably sized rental unit within 30 days of its availability. If a suitably sized unit is not available, surviving household members may remain in the rental unit according to the housing project's occupancy rules as follow:

- Continued occupancy of the rental unit will not be allowed when:
 - ◇ the rental unit has accessibility features for individuals with disabilities;
 - ◇ the household no longer has a need for such accessibility features; and
 - ◇ the housing project has a tenant application from an individual with a need for the accessibility features.
- If the housing project does not have a tenant application from an individual with a need for the accessibility features, the household may remain in the rental unit until the housing project receives an application from an individual in need of the accessibility features, at which point, the household will be required to move within 30 days; and
- If a suitably sized unit is not available in the project within 30 days, the tenant may remain in the unit with accessibility features until a unit becomes available, and must then move within 30 days.

6.31 LEASE VIOLATIONS

Borrowers may require tenants in violation of occupancy rules or the terms of their lease to vacate the property in accordance with the terms of their lease agreement. However, borrowers must provide notice to such tenant in a format that is in compliance with state and local laws and is approved by the Agency.

Tenants who are informed that they must vacate the property due to lease violations and who wish to appeal such judgment are entitled to do so under the procedures outlined in Section 8.

6.32 TERMINATION OF OCCUPANCY

A. Tenants In Violation of the Lease

In accordance with the lease, a borrower may terminate or refuse to renew a tenant's lease for material noncompliance with the lease or occupancy rules or for other good cause. Material noncompliance with lease provisions or occupancy rules includes actions such as:

- Violations of lease provisions or occupancy rules that are substantial and repeated.
- Nonpayment or repeated late payment of rent or other financial obligations due to the borrower.

- Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance. Such activity must have occurred on the project's premises by the tenant, a member of the tenant household, or any other person under the tenant's control at the time of the activity.

For purposes of terminating a tenant's occupancy, good cause includes actions such as actions by the tenant or member of the tenant's household that:

- Threaten the health and safety of other persons or the right of other persons to peaceful enjoyment of their dwelling.
- Result in substantial physical damage causing an adverse financial effect on the housing or other persons' property.

If the borrower terminates the tenant's lease, the borrower must document in writing in the tenant's file:

- The incidences related to the lease.
- That the tenant was given notice prior to the termination that the tenant's activities would result in occupancy termination.

B. Other Lease Terminations

A landlord may terminate occupancy for conditions beyond the tenant's control, such as:

- Restructuring an Agency loan;
- Required repair or rehabilitation of the building; or
- Natural disaster.

Under these circumstances, the affected tenants may request a LOPE from the Agency. The LOPE will provide the tenant with priority entitlement to rental units in other Agency-financed projects for 120 days from the date of the LOPE. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

6.33 AGENCY REVIEW AND MONITORING OF INELIGIBLE TENANTS

In order for an ineligible tenant to remain at the property beyond the allowable time frame of 30 days or the end of the lease, whichever is longer, the borrower must obtain written permission from the Agency. In granting such permission, the Agency should assure that one of two criteria exist:

- The waiting list for the specific unit type has no eligible tenants; or

- The required time period for vacating the unit would create a hardship for the family.

In reviewing whether the borrower is in compliance with the requirements to remove ineligible tenants the Agency should check to ensure:

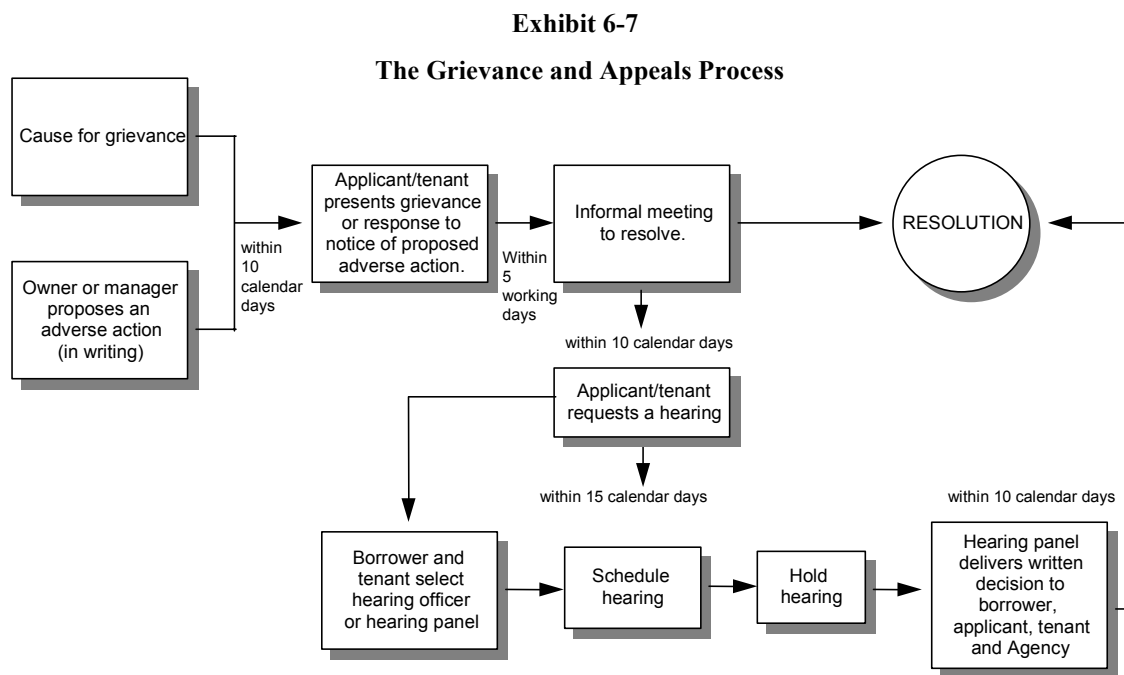
- The borrower is requesting approval for ineligible tenants to remain on the property in a timely manner.
- The borrower is properly documenting any reason for which an ineligible tenant is being allowed to continue to reside of the property. Some of these reasons may include:
 - ◇ permission has been granted by the Agency for the tenant to remain temporarily,
 - ◇ the tenant is a surviving member of an elderly household,
 - ◇ the household is still income eligible and will be moved to an appropriate-sized unit when one becomes available at the property.
- The borrower is providing proper notice to tenants regarding the time frames for vacating the property.

SECTION 8: TENANT GRIEVANCE PROCEDURES [7 CFR 3560.160]

This section presents the process for resolving tenant grievances. Every step of the process will be explained with the responsibilities of each party involved. Topics covered in this section include: when to file a complaint; the hearing process; requirements governing the hearing; and the hearing decision. It is important to note that a resolution that is in the best interest of everyone should have gone through the entire grievance process before a final decision was made.

6.34 OVERVIEW OF THE PROCESS

The grievance process should always begin with an informal meeting between the grieved party and the borrower/management agent. It is the Agency's belief that the best way to resolve grievances is through an informal meeting between the two parties. If the issue cannot be resolved on this level, the Agency will intervene. Under these circumstances, the borrower must prepare a written summary of the problem and submit it to the tenant and the Agency. The tenant may also submit a summary to the Agency. The parties will select a hearing panel or hearing officer to govern the hearing. Two weeks after the hearing, all parties are informed of the decision. Exhibit 6-7 provides an example of the grievance process.



6.35 WHEN IS A TENANT GRIEVANCE LEGITIMATE?

It is important for Agency staff to determine if a tenant or prospective tenant's grievance is within the requirements established for the program. For example, "I want to file a complaint because the manager does not speak to me," is not a legitimate complaint. On the other hand, a complaint that the building manager fails to maintain the property according to the Agency

guidelines is a legitimate complaint. Exhibit 6-8 lists the circumstances in which a tenant may or may not be able to file a complaint.

Exhibit 6-8

Tenant Complaints – Allowable Circumstances

<i>A complaint may <u>not</u> be filed if:</i>	<i>A complaint <u>may</u> be filed if:</i>
<ul style="list-style-type: none"> • There is a proposed rent change that is authorized by the Agency. • A tenant or prospective tenant believes that he/she has been discriminated against. If a person believes that discrimination has occurred, they should file a complaint with the Secretary of Agriculture or the Secretary of HUD. • A project has formed a tenant’s association and all parties involved have agreed to use this association as a method of settling grievances. • There are changes in the rules that are required by the Agency and proper notice has been given. • The tenant is in violation of the lease and those violations result in termination of tenancy. • Disputes between tenants that do not involve the borrower/management agent. • Displacement or other effects as a result of prepayment. 	<ul style="list-style-type: none"> • There is a modification of the lease; change in the rules; or changes in the rent that are not authorized by the Agency. • The borrower/management agent fails to maintain the property in a manner that is decent, safe, and sanitary. • The borrower violates a lease provision or occupancy rule.

6.36 BORROWER/MANAGEMENT AGENT RESPONSIBILITIES

The borrower/management agent is responsible for providing all tenants and prospective tenants with decent, safe, and sanitary housing. The following is a list of all of the responsibilities of the borrower/agent.

- Post all regulations, summary of regulations, or tenant information, including the equal housing opportunity poster, “and justice for all” poster, tenant grievance and appeals procedures, the affirmative fair housing marketing plan, occupancy rules, and office and emergency hours and phone numbers in a conspicuous place.
- Provide all tenants with a summary of their rights at the time the lease is signed and at each lease renewal. For tenants that are currently living in the project a summary must be submitted once the summary is created.

- If the project has a large population of non-English speaking tenants, the borrower/agent must provide the summary and any other documents that pertain to the tenant's rights, in the non-English language.

6.37 THE HEARING PROCESS

A. Request for a Hearing

- Each hearing process must begin with the request for a hearing. The tenant or prospective tenant must present their request within ten days after the receipt of the summary of the informal meeting. The request must contain the following information:
 - ◇ The reason for the grievance or contest of the borrower/management agent's proposed action.
 - ◇ The action relief sought.
 - ◇ Additional information?
- If the tenant or prospective tenant's request for a hearing is not received within the given time, the borrower or management agent's decision will become final.

B. Scheduling the Hearing

The hearing must be scheduled 15 days after the receipt of the tenant's request for a hearing. If a hearing officer or hearing panel must be selected, the hearing will be scheduled within 15 days after the selection or appointment of a hearing panel or hearing officer. It is the responsibility of the two parties to agree upon a place and time that is mutually convenient to hold the hearing. If the two parties can not agree on a place and time, it will become the responsibility of the hearing officer or hearing panel to make the decision.

C. Selection of the Hearing Panel or Hearing Officer

The two parties must select a hearing officer. If the hearing officer cannot be agreed upon, the two parties will choose members to serve on the hearing panel. The hearing panel should consist of three members. The tenant and the borrower/management agent will each elect one person to the panel. It is then the responsibility of the two chosen members to elect a third member to the panel. If within 30 days from the time the request for the hearing was submitted a hearing panel has not been formed, the borrower/management agent must inform the Agency. Within 10 days of reviewing the facts, the Agency must appoint a hearing officer. Once a hearing officer or panel is selected the Agency must inform them in writing of their responsibilities for conducting the hearing.

Some helpful information that should be remembered by all parties involved in the process, when selecting a hearing panel or hearing officer includes:

- Hearing panel members should be impartial, disinterested persons.
- The hearing officer cannot be a person previously considered by the tenant or borrower/management agent.
- The hearing officer cannot be the District Director.

Potential Hearing Panel Members

1. Legal Aid Counsel
2. An Agency Person
3. Someone With Knowledge of the Program
4. A Minister

To minimize time and the level of effort, a management agent may elect to have a standing hearing panel for each project that he/she manages. If a standing panel is chosen, the above process will have to be forfeited in lieu of the following process.

- A hearing panel consists of three members: one tenant panelist, one borrower/management agent panelist, and a chair.
- Tenants will get to nominate and vote for their panel members. A meeting must be held to allow the tenants the opportunity to choose two members to serve on the standing panel; one member will serve as the alternate. All residents should be notified of the time, date, and place where the election is going to take place. The borrower is responsible for ensuring that the notice is placed in a conspicuous place, within two weeks of the time the person is expected to start serving as a panel member. The meeting must also be held in a place that is convenient and accessible to the tenants.
- The borrower/management agent is responsible for selecting one or two members to serve on the standing panel. If two members are chosen, one will serve as the alternate.
- The third and “mutual” member of the panel will serve as the chair for the panel. The other two interested parties will elect the chairperson. Each party will only have the opportunity to give one vote, even if two people were elected to serve on the panel.
- Each member will serve on the panel for one year, with the opportunity for re-election. All members of the standing panel must be willing to render their services without compensation.

D. Examination of Records

At a reasonable time before the hearing, the borrower/agent must allow the tenant the opportunity to examine all files that are going to be used during the hearing. Documents can be examined and copied if:

- The tenant is willing to cover any expenses that may be incurred;
- The document, record, or policy is one that will be used during the hearing process; and
- The document, record, or policy is not subject to any laws or confidentiality agreements that prohibit reproductions.

Documents That May Not Be Copied

1. Credit reports
2. Project budgets
3. Supervisory findings

E. Escrow Deposits

Tenants may establish escrow accounts if a grievance involves a rent increase not authorized by the Agency or if the borrower/agent is not maintaining the property in a decent and sanitary manner. The escrow account will allow the tenant the opportunity to make timely rent payments without having the borrower/agent receive the payment until the grievance has been settled. To maintain an escrow account, tenants must adhere to the following rules:

- All deposits must continue until the grievance is resolved.
- The institution that the escrow account is established in must be a federally insured institution.
- All deposits must be made on time; failure to do so will terminate the entire process and all sums will be due immediately.
- Tenants must make all receipts of deposit available for examination by the borrower/agent.

6.38 REQUIREMENTS GOVERNING THE HEARING

The hearing is an informal proceeding at which evidence is presented to a hearing officer or hearing panel. The hearing must be designed to ensure that the rights of all parties involved are protected. The hearing must protect:

- The right of both parties to be represented by counsel or another person(s) chosen as their representative;
- The right of the tenant or prospective tenant to a private hearing unless a public one is requested;
- The right of the tenant or prospective tenant to present oral and written evidence and arguments in support of their grievance or appeal, and to refute the evidence of all witnesses on whose testimony or information the borrower or management agent relies; and

- The right of the borrower or management agent to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses on whose testimony or information the tenant or prospective tenant relies.

During the hearing, each party must present evidence to support their position. All participants at the hearing must conduct themselves in an orderly manner. Participants that cannot conduct themselves in an orderly manner will be excluded from the proceedings or will cause the hearing panel or hearing officer to make a decision that is not in favor of the disorderly party.

Remember

The Agency approval is only to make sure that the decision is in compliance with other Agency programs.

If the tenant or prospective tenant fails to appear at a scheduled hearing, the hearing officer or hearing panel may choose to postpone the hearing for no more than five days or may determine that the party has waived his or her right to a hearing under this subpart. If the determination is made that the absent party has waived his or her rights, the hearing officer or hearing panel will make a decision on the grievance. All parties involved in the hearing must be informed of the hearing panel's decision.

6.39 THE HEARING DECISION

It is the responsibility of the hearing officer or hearing panel to prepare and submit a written decision to both parties within 10 calendar days of the hearing. The hearing officer or hearing panel must inform the Agency of the decision and the reasons for making that decision. The decision should be based on the facts that were presented during the hearing. The decision is not final until it has been approved by the Agency for compliance. This contingent form of approval should be noted in the decision letter. Upon receipt of the letter, the borrower and the tenant must comply with the directives specified in the decision.

SECTION 9: SPECIAL REQUIREMENTS FOR LABOR HOUSING

[7 CFR 3560.575 and 7 CFR 3560.624]

While the Agency sponsored Labor Housing programs have similar requirements in many respects to the Rural Rental Housing programs, because the target populations that these programs serve vary, there are some differences in program rules.

This section is designed to highlight these differences with regard to the occupancy rules. Unless otherwise noted below, the requirements throughout Chapter 6 also apply to Labor Housing projects.

6.40 OFF-FARM LABOR HOUSING

A. Eligible Tenants

Labor Housing tenants must meet all of the following criteria in order to be defined as an eligible tenant for the purposes of residing in labor housing:

- Occupational. An eligible household must include a domestic farm laborer, a retired or disabled domestic farm laborer, or must be a surviving household of a deceased domestic farm laborer.
- Income. The household must meet the definition of income eligibility as defined in Section 1.
- Occupancy. The household must remain in compliance with the borrower's occupancy policy as established in Section 3.

If a household, upon recertification, is not in compliance with any of the above criteria, then it will be defined as an ineligible tenant and will be covered by Section 6.

B. Occupancy Priorities

1. *Properties Without Rental Assistance*

When a borrower of a labor housing project without Rental Assistance is selecting the appropriate applicant for a vacant unit from the waiting list, the selection will be regulated by the following priorities:

- ***First priority*** must be given to eligible farm laborer households based upon percent of total earnings from farm labor in the following ranked categories: 71 to 100 percent; 51 to 70 percent; 26 to 50 percent; and less than 25 percent.
- ***Second priority*** must be given to retired or disabled farm laborer households who were in the local farm market area at the time of retirement or becoming disabled.
- ***Third priority*** must be given to other retired or disabled farm laborer households.

Within each of the above priorities, occupancy priority within each ranking category is according to the household's income: very low, low, and then moderate.

Example

Project D has a vacant two-bedroom unit. On the waiting list, there are seven applicants eligible for a two-bedroom unit.

1. One applicant is a very low-income disabled farm laborer household from the local farm market area;
2. One applicant is low-income and 100 percent of the household's earnings are from farm labor;
3. One applicant is a low-income retired farm laborer household from another state;
4. One applicant is a low-income retired farm laborer household from the local farm market area;
5. One applicant is very low-income and 80 percent of the household's income comes from farm labor;
6. One applicant is a very low-income disabled farm laborer household from another county; and
7. One applicant is very low-income and 50 percent of the household's earnings are from farm labor.

The borrower must offer the vacant unit to these applicants in the following order.

1. First to the very low-income applicant for whom 80 percent of the household's earnings are from farm labor;
2. Second to the low-income applicant for whom 100 percent of the household's earnings are from farm labor;
3. Third to the very low-income applicant for whom 50 percent of the household's earnings are from farm labor;
4. Fourth to the very low-income disabled farm laborer household from the local farm market area;
5. Fifth to the low-income retired farm laborer household from the local farm market area;
6. Sixth to the very low-income disabled farm laborer household from another county; and
7. Seventh to the low-income retired farm laborer household from another state.

2. Properties With Rental Assistance

For labor housing units with rental assistance, the priorities listed above still apply. However, occupancy is first granted to all eligible very low-income farm worker households by ranked priority, then to low-income farm worker households by ranked priority. Moderate-income farm workers may be served without Rental Assistance, when

there are no very low- or low-income eligible farm workers on the waiting lists, again by ranked priority.

Example

Project E is a property that has rental assistance. It has a vacant two-bedroom unit. On the waiting list, there are six applicants eligible for a two-bedroom unit.

1. One applicant is a very low-income disabled farm laborer household from the local farm market area;
2. One applicant is low-income and 100 percent of the household's earnings are from farm labor;
3. One applicant is a low-income retired farm laborer household from another state;
4. One applicant is a very low-income retired farm laborer household from another county;
5. One applicant is a moderate-income farm worker household working in the local market area and 100 percent of the household's earnings are from farm labor; and
6. One applicant is very low-income and 50 percent of the household's earnings are from farm labor.

The borrower must offer the vacant unit to applicants in the following order.

1. First to the very low-income applicant for whom 50 percent of the household's earnings are from farm labor;
2. Second to the very low-income disabled farm laborer household from the local farm market area;
3. Third to the very low-income retired farm laborer household from another county;
4. Fourth to the low-income applicant for whom 100 percent of the household's earnings are from farm labor;
5. Fifth to the low-income retired farm laborer household from another state; and
6. Sixth to the moderate-income applicant for whom 100 percent of the household's earnings come from farm labor.

C. Projects With Diminished Need

When there is a diminished need for housing by persons or families who are eligible to reside in labor housing, units may be made available to persons or families eligible for occupancy under Section 1. Tenants admitted under this exception may occupy the labor housing until such time the units are again needed by persons or families eligible under paragraph B.1 of this section.

6.41 ON-FARM LABOR HOUSING

A. Eligible Tenants

The income restrictions and occupancy priorities listed throughout this chapter do not affect the occupancy of on-farm labor housing. This housing is owned by farm borrowers and is for the purpose of providing decent, safe, and sanitary housing to the specific farmer's employees. Occupancy of on-farm labor housing owned by farm borrowers is restricted to employees of the farmer or is governed by an employment contract with the farmer.

B. Ineligible Tenants

For on-farm labor housing, ineligible occupants will include:

- The immediate relatives of the borrower(s).
- Anyone who is not employed in domestic farm labor.

Ineligible tenants may occupy housing owned by farm borrowers with the permission of the Agency.

ATTACHMENT 6-A

ANNUAL INCOME SOURCES

These are items to be included as income.

1. All wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services (before any payroll deductions).
2. The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness must not be used as deductions in determining net income; however, an allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness must not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized above. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income must include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate as determined by HUD. (*Assets are discussed further in paragraph 6.9.*)
4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, except lump-sum settlements, and other similar types of periodic receipts, including a lump-sum payment or prospective monthly amounts for the delayed start of a periodic payment (except Social Security).
5. Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay (see Item #3 under Income Exclusions below).
6. Welfare assistance is income for the purpose of eligibility and rents/payments. However, in some states/areas, welfare assistance includes an amount specifically designated for shelter and utilities. These grants are subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities. In these cases, the welfare assistance income to be included as income must consist of:
 - the amount of the allowance or grant, exclusive of the amount specifically designated for shelter or utilities; plus
 - the maximum amount that the welfare assistance agency could, in fact, allow the family for shelter and utilities.If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under this paragraph must be the amount resulting from an application of the percentage.
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling.
8. All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is head of the family, spouse or other person whose dependents are residing in the unit (however, see Item #7 under Income Exclusions below).

These items must be excluded as income.

1. Income from employment of children (including foster children) under the age of 18 years.
2. Payments received for the care of foster children or foster adults (usually individuals with disabilities unrelated to the tenant family, who are unable to live alone).
3. Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses (however, see Item #5 of Income Inclusions above).
4. Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of a live-in aide.
6. The full amount of student financial assistance paid directly to the student or to the educational institution.
7. The special pay of a family member serving in the Armed Forces who is exposed to hostile fire.
8.
 - Amounts received under training programs funded by HUD;
 - Amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
 - Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
 - Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by an Indian housing resident for performing a service for the IHA, on a part-time basis, that enhances the quality of life in Indian housing (for example, lawn maintenance, fire patrol, or hall monitoring). No resident may receive more than one such stipend during the same period of time (Note: If the resident receives more than \$200/month, the entire amount is counted as income); or
 - Incremental earnings and benefits from state or local employment training programs and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for a limited period during which the family participates in the employment training program.
9. Temporary, nonrecurring or sporadic income (including gifts).
10. Reparation payments from foreign governments in connection with the Holocaust.
11. Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse).
12. Adoption assistance payments in excess of \$480 per adopted child.
13. Earnings and benefits to any family member resulting from the participation in a program providing employment training and supportive services in accordance with the Family Support Act of 1988, Section 22 of the ***U.S. Housing Act (the Act) of 1937***, or any comparable federal, state, tribal or local law during the exclusion period.
14. Deferred periodic payments of Supplemental Security Income and Social Security benefits that are received in a lump-sum payment or in prospective monthly amounts.
15. Amounts received by the family in the form of refunds or rebates under state or local law for property taxes on the dwelling unit.
16. Amounts paid by a state agency to a family with a developmentally disabled family member living at home, to offset the cost of services and equipment needed to keep the developmentally disabled family member at home.
17. Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under the United States Housing Act of 1937.

ATTACHMENT 6-B

LEASE REQUIREMENTS

A. Lease Structure

- All leases must be in writing.
- Initial leases must cover a one-year period.
- If the tenant is not subject to occupancy termination according to 7 CFR 3560.158 and 7 CFR 3560.159, a renewal lease or lease extension addendum must cover a one-year period.
- In areas with a concentration of non-English speaking tenants, leases must be available to tenants in both English and the appropriate additional language.
- Leases must give address(es) to which to direct complaints.
- Leases must include statement terms and conditions for modifying the lease.

B. Required Lease Clauses

Leases for all multi-family housing must include a number of specific clauses as listed below:

- The requirement to move or pay an increased rent if household income increases above moderate income. (This clause does not apply to leases for persons who are elderly, disabled, or handicapped and living in a full-profit plan development.)
- The requirement that tenants move out of the project within 30 days of being notified by the borrower that they are no longer eligible for occupancy unless the conditions cited in 7 CFR 3560.158(c) exist.
- The requirement that tenants notify borrowers regarding changes in income, citizenship, or number of persons living in the unit.
- The requirement for tenants to notify borrowers in a situation of extended tenant absences.
- The requirements for making restitution when a household receives benefits to which it is not entitled and a statement advising tenants that the submission of false information could result in the initiation of legal action by the Agency.
- The requirement that tenants agree to income certification.
- The requirement that the household's tenancy is subject to compliance with the terms of all applicable assistance programs covering the unit and/or project.
- The requirement that during acceleration and foreclosure proceedings:
 - ◊ The tenant contribution must remain as if interest credit and/or rental subsidy were still in place and available had acceleration not occurred; and

- ◇ The terms of the lease will remain in effect until the date acceleration and/or foreclosure is resolved.

Leases for tenants who have a Letter of Priority Entitlement (LOPE) and are temporarily occupying a unit for which they are not eligible must include a clause establishing the tenant's responsibility to move when a suitable unit becomes available.

Leases must contain an escalation clause permitting changes in basic/note rate rents before the lease expires. Changes must be approved by the Agency.

Leases must specify no escalation in tenant contribution due to loan prepayment or when rental assistance or interest credit is terminated due to the fault of management or the owner, or due to liquidation and acceleration of the note.

Leases must include statement that tenant's payment will not change if Federal subsidies paid to borrower on behalf of tenants are suspended or canceled, for the term of the lease.

Leases must include statement that the project is financed by the Agency and that the Agency has the right to further verify information provided by the applicant.

Leases must say that project is subject to:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Fair Housing Act
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- The Americans with Disabilities Act

Leases must specify requirements (and exceptions) to move to the next available appropriately sized unit, if the unit becomes overcrowded, underused, or should the tenant no longer meet eligibility requirements.

Leases must include a provision that establishes when a guest will be considered a member of the household and be required to be added to the tenant certification.

Leases must include a provision that tenancy remains in place as long as the tenant's possessions remain in the apartment, even after tenant has left. This is the case until possessions are removed voluntarily or by legal means, subject to state and local law.

Leases for rental assistance units must include specific clauses. These clauses must be signed by the lessor and lessee, and specify:

- The tenant's gross monthly contribution, and under what circumstances it may change; and that
- The tenant contribution will not increase if rental assistance is terminated due to actions by borrowers.

For tenants living in Plan II interest credit units, leases must include a provision on gross monthly contribution.

All leases, including renewals, must include the following language:

“It is understood that the use, or possession, manufacture, sale, or distribution of an illegal controlled substance (as defined by local, State, or Federal law) while in or on any part of this apartment complex or cooperative is an illegal act. It is further understood that such action is a material lease violation. Such violations (hereinafter called ‘drug violation[s]’) may be evidenced upon the admission to or conviction of a drug violation. It is further understood that domestic violence will not be tolerated on Rural Housing properties, and that such action is a material lease violation. All perpetrators will be evicted, while the victim and other household occupants may remain in the unit in accordance with eligibility requirements.

The landlord may require any lessee or other adult member of the tenant household occupying the unit (or other adult or non-adult person outside the tenant household who is using the unit) who commits a drug violation or domestic violence to vacate the leased unit permanently, within time frames set by the landlord, and not thereafter enter upon the landlord’s premises or the lessee’s unit without the landlord’s prior consent as a condition for continued occupancy by members of the tenant household. The landlord may deny consent for entry unless the person agrees not to commit a drug violation or domestic violence in the future and is either actively participating in a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, or has completed a counseling or recovery program.

The landlord may require any lessee to show evidence that any non-adult member of the tenant household occupying the unit, who committed a drug violation or domestic violence, agrees to not commit a drug violation or domestic violence in the future, and to show evidence that the person is either actively seeking or receiving assistance through a counseling or recovery program, complying with court orders related to a drug violation or domestic violence, completed a counseling or recovery program within time frames specified by the landlord as a condition for continued occupancy in the unit. Should a further drug violation or domestic violence be committed by any nonadult person occupying the unit, the landlord may require the person to be severed from tenancy as a condition for continued occupancy by the lessee.

If a person vacating the unit, as a result of the above policies, is one of the lessees, the person shall be severed from the tenancy and the lease shall continue among any other remaining lessees and the landlord. The landlord may also, at the option of the landlord, permit another adult member of the household to be a lessee.

Should any of the above provisions governing a drug violation be found to violate any of the laws of the land, the remaining enforceable provisions shall

remain in effect. The provisions set out above do not supplant any rights of tenants afforded by law.”

For handicapped-accessible units occupied by those not needing its special features, a lease must discuss situations where management has made a temporary unit assignment, and specify who bears the cost of moving the tenant to another unit. Additionally, the lease clause must require the management to provide the tenant written notification when they must move within 30 days of notification from management that an eligible applicant with disabilities requires the unit.

Prepayment is subject to restrictive-use covenants. If prepayment occurs, leases and renewals must be amended to include a clause specifying tenant protections.

C. Required Information

All leases must contain the following information and provisions:

- The name of the tenant, any co-tenants, and all members of the household residing in the unit.
- The identification of the unit.
- The amount and due date of monthly tenant contributions and late payment penalties.
- The utilities, services, and equipment to be provided for tenants.
- The tenant’s utility payment responsibility.
- The certification process for determining tenant occupancy eligibility and contribution.
- The limitations of the tenant’s right to use or occupancy of the dwelling.
- The tenant’s responsibilities regarding maintenance and obligations if tenant fails to fulfill these responsibilities.
- The agreement of management to accept tenant payment regardless of other charges that the tenant owes, and management’s agreement to seek legal remedy for collecting other charges accrued by the tenant.
- The maintenance responsibilities of management in buildings and common areas, according to state and local codes, Agency rules, and fair housing requirements.
- The responsibility of management at move-in and move-out to provide tenants with a written statement of the unit’s condition, and provisions for tenant participation in inspection.
- The provision for periodic inspections by the borrower or management, and other circumstances under which management may enter the premises while a tenant is renting.
- The tenant’s responsibility to notify management of an extended absence, typically four weeks or more.

- The agreement that tenants may not sublet the property without management or Agency consent.
- The provision regarding transfer of the lease if the project is sold to an Agency-approved buyer.
- The procedures that must be followed by management and the tenant in giving notice required under terms of the lease.
- The good-cause circumstances under which management may terminate the lease and length of notice required.
- The disposition of the lease if the housing becomes uninhabitable due to fire or other disaster, including the borrower's rights to repair the building or terminate the lease.
- The procedures for resolution of tenant grievances consistent with the requirements of 7 CFR 3560.160.
- The terms under which a tenant may, for good cause, terminate a lease with 30 day's notice prior to lease expiration.
- The signature clause indicating that the lease has been executed by the borrower and the tenant.

D. Projects and Units Receiving HUD Assistance

In multi-family projects receiving project-based assistance under Section 8 of the Housing Act of 1937, borrowers may use the HUD model lease. A clause must be inserted into the lease requiring that tenants ineligible at recertification must leave the property unless allowed to stay under their HUD lease.

For Section 8 certificate and voucher holders, borrowers may use:

- A standard HUD-approved lease;
- A HUD-approved lease that includes a number of modifications; or
- An Agency-approved lease if acceptable to HUD or the local housing authority.

E. State and Local Requirements

Borrowers must use a lease that is consistent with state and local requirements.

- If any lease provision is in violation of state or local law, the lease may be modified to the extent needed to comply with the law, but any changes must be consistent, to the greatest extent possible, with the required provisions established in 7 CFR 3560.156(c).
- Leases must include procedure for handling tenant's abandoned property, as provided by State law.

ATTACHMENT 6-C

PROHIBITED LEASE CLAUSES

Borrowers are prohibited from including any of the following clauses in the lease:

- Clauses prohibiting families with children under 18.
- Clauses prohibiting occupancy by a handicapped person willing and able to modify the unit at their own expense.
- Clauses requiring prior consent by tenant to any lawsuit that borrowers may bring against the tenant in connection with the lease.
- Clauses authorizing borrowers to hold any of a tenant's property until the tenant fulfills an obligation.
- Clauses in which tenants agree not to hold borrowers liable for anything they may do or fail to do.
- Clauses in which tenants agree that borrowers may bring suit against the tenant without notice.
- Clauses in which tenants agree that borrowers may evict the tenant or sell their possessions whenever they determine that a breach or default has occurred.
- Clauses authorizing the borrower's attorney to appear in court on behalf of the tenant, and to waive their right to a trial by jury.
- Clauses authorizing the borrower's attorney to waive the tenant's right to appeal or to file suit.
- Clauses requiring the tenant to agree to pay legal fees and court costs whenever the borrower takes action against the tenant, even though court may find in favor of the tenant.

ATTACHMENT 6-D

ACQUIRING AUTOMATION SUPPORT FOR THE INDUSTRY INTERFACE OR OTHER AUTOMATION NEEDS

The Agency will approve the use of project funds to acquire automated support to participate in the Industry Interface. While operating costs will be reduced in the long term, there may be some short-term increases to accommodate the initial acquisition of automated support.

Guidelines for obtaining automated support for the Industry Interface are as follows:

- With prior Agency approval, borrowers may use project operating or reserve funds to purchase or lease hardware or software needed to participate in the Industry Interface.
- Once borrowers have acquired automation capabilities, they may allow their management agent to use them to participate in the Industry Interface. This cost may be prorated over several projects owned by different borrower entities with a common management agent.
- When the cost of acquiring management software or hardware is not cost effective for a project (or multiple projects with common management), the Agency may allow the cost of contracting with a service bureau to provide automation support as a project operating expense.
- To request Agency approval, borrowers must submit a brief proposal that documents the anticipated costs and benefits of adopting the automation strategy being proposed.

1. Acquiring Additional Automation Capabilities

It is important to note that the approval for the use of project funds discussed above extends only to the portion of the computer software and hardware needed to participate in the Industry Interface. If additional software or hardware capacity is desired by the borrower, the following applies:

MFH borrowers are encouraged to use automated systems to manage MFH projects and to prepare and process paperwork associated with project management. Where economically feasible, computer applications can improve management efficiency and reduce errors and omissions. However, the purchase of computer hardware and software out of project funds should be carefully analyzed.

If a borrower entity's purchase of computer hardware or software to be used solely at a project can be expected to show a reduction in project operating and maintenance expenses, the purchase cost may be approved by the Agency as a line item project expense. The expense may be approved at project inception out of the project's two percent initial operating account or subsequent to project start-up out of annual operating revenues. The cost may be prorated over several projects owned by the same borrower entity. Any computer hardware or software purchased with project funds must remain with the project if there is any subsequent change in management or ownership of the project.

The purchase or use of computer hardware or software by a management company, versus a borrower entity with or without an identity of interest with a borrower, may not be considered an allowable line item expense on an Agency approved project budget.

2. Choosing to Use a Service Bureau

If acquiring automation is not a sound decision, borrowers may consider using a service bureau to provide automation services at a fee. The fee can be a project expense and should be reasonable. The Agency must approve a borrower's determination that it is in the best interest of the project to contract with a service bureau.

The cost of a service bureau is essentially an "add-on expense" to an operating budget, since the function is not currently performed by any project. Borrowers who find that their project budget will not support the cost of acquiring automation support or a service bureau fee should contact their servicing office to be excepted from mandatory participation in the Industry Interface.

The Agency will not allow an add-on fee for the cost of a service bureau if the borrower's analysis demonstrates that it is less expensive to acquire an automation capacity, unless extenuating circumstances exist.

The Agency will not approve the use of an add-on service bureau fee as a project expenses for a contract with a firm that has an Identify-of-Interest (IOI) with the project borrower or management agent, without detailed documentation indicating that the IOI service bureau is clearly more cost effective than a non-IOI service bureau. While this policy does not restrict the formation of IOI firms to process tenant certifications, service bureau companies or the payment for their services from a management fee, it is intended to address concerns expressed by the OIG that IOI firms may unnecessarily inflate project operating expenses.